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ANOTHER APPROACH TO REGULATORY REFORM

BY MURRAY L. WEIDENBAUM

A Statement to the Senate Committee on the Judiciary,
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I would like to present a different approach to regulatory reform, one that involves the Congress more than the bureaucracy. At the outset, it is helpful to emphasize the compelling case for reforming government regulation:

1. The regulatory apparatus is extremely cumbersome and costly. To substantiate that, I submit for the record my formal statement and the new Directory of Federal Regulation just prepared by our Center for the Study of American Business at Washington University.
2. Government regulation generates many adverse side effects which interfere with the attainment of other important national objectives. These undesirable impacts of regulation include higher inflation, more unemployment, lower productivity, reduced capital formation, and a slow-down in technological innovation.
3. But the primary objection to regulation is that, by and large, it is not working. It is not a question of begrudging a "few" more billion dollars for job safety, consumer health, etc. The fact is that the typical regulatory program is not effective in reaching these worthy objectives.

The answer surely is not to redouble the existing regulatory effort. That only resembles the hangover remedy that consists of the hair of the

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dog that bit you. Nor is the main answer the obvious one of berating the bureaucracy. To be sure, much nonsense emanates from the regulatory agencies. I have tried to do my share to expose and thus eliminate silly regulations.

But the fundamental source of the problem is statutory. Every regulation is promulgated under the authority of a statute passed by the Congress. Every regulator is paid out of an appropriation passed by the Congress. As a general matter, Congress has set up too many regulatory agencies, passed too many regulatory laws, set up too many unrealistic regulatory objectives, and appropriated too much money to carry on too much regulation. Thus, the ultimate need is for the Congress to come to realize that the government cannot regulate everything.

We must understand why the Congress has set up this vast regulatory apparatus. Surely, the intent was not to harass business or to burden the consumer. Rather, the Congress was reacting to the pressures from a variety of interest groups that have been urging more and more regulation, many of them operating under the banner of the Public Interest.

The public, the media, and government decision makers all need to realize that the limited viewpoints of these so-called public interest groups prevent them from effectively representing the totality of the public interest. The problem is their attitude that they represent the public interest. One of the keys to their power is the myth of their powerlessness.

In the public arena, they possess great power. Large segments of the media, as well as many other institutions, defer to the representatives of the so-called Public Interest Groups because they are viewed automatically

as the underdog. This simpleminded attitude often results in the people who disagree with them being portrayed as the "heavies." Just because I may disagree with Ralph Nader on a specific issue should not inevitably be taken as my representing some special interest opposed to the public welfare. It may just happen that on occasion Ralph is wrong.

A little humility would go a long way in broadening the intellectual horizons of many of the so-called Public Interest Groups. It is no simple task to identify the public interest in any specific issue of public policy. As a past participant in government policy-making, it is apparent to me that good policy consists of properly balancing and reconciling a variety of bona fide interests. This is far more difficult than merely choosing in a simple-minded fashion between "public" or "consumer" interests (which are presumably good and to be endorsed) and "special" interests, which are presumably evil and to be opposed.

What can be done? There are no simple approaches. It surely is not a question of being for or against regulation of business. A substantial degree of governmental intervention is to be expected in a complex, modern society. The need, rather, is to identify those sensible changes that can be made in the regulatory process so as to achieve the desired social goals (less pollution, fewer product hazards, etc.) with minimum adverse impacts on other important goals (more jobs, less inflation, etc.). The serious question is whether, in view of the many goals of our society, government regulation in a particular instance is doing more harm than good.

1. An economic impact statement should be required prior to issuing each new regulation. The notion that policymakers should carefully consider the costs and other adverse effects of their actions as well as the benefits is neither new nor revolutionary. The Ford Administration did institute some form of economic impact statements for new regulations.

President Carter has recently made some changes in the procedures. Unfortunately, neither the Ford nor the Carter approaches are up to the task.

Merely requiring a reluctant agency to perform benefit/cost analyses is not adequate. The key action needed is for Congress to pass a law limiting regulations to those instances where the total benefits to society exceed the costs. Government regulation should be carried to the point where the costs equal the benefits, and no further. Overregulation -- which is regulation for which the costs exceed the benefits -- should be avoided. The failure to take those costs into account has resulted in the problem of overregulation that faces the United States today.

The requirement for an economic impact statement would be well met by the provisions of S.2011, the proposed Regulatory Reduction and Control Act of 1978. This proposed law contains many important and useful provisions, notably requiring the head of each regulatory agency to send to the Congress a comprehensive economic analysis of a proposed rule before it takes effect. Under S.2011 the required economic impact analysis must cover the costs and benefits to consumers, wage earners, businesses, and federal, state and local governments. A paperwork impact analysis is also required. It would be helpful if S.2011 required the regulatory agency to demonstrate that the benefits exceeded the costs before it could promulgate any new rule.

2. All existing government regulatory activities should be subject to a sunset mechanism. Each regulatory agency should be reviewed by the Congress on a strict timetable to determine whether it is worthwhile to continue it in light of changing circumstances. Many government programs,

prove this. A more satisfying answer to improving the effectiveness of government regulation of private activities requires a basic change in the approach to regulation, and one not limited to the job safety program. Indeed, I use that program merely as an illustration. If the objective of public policy is to reduce accidents, then public policy should focus directly on the reduction of accidents themselves.

Rather than issuing citations to employers who fail to fill forms out correctly or who do not post the right notices, emphasis should be placed on the regulation of employers with high and rising accident rates. But the government should not be much concerned with how a company achieves a safer working environment. Some companies may find it more efficient to change work rules, others to buy new equipment, and still others to retrain workers. The making of this choice is precisely the kind of operational business decision making that government is not good at and should avoid.

5. Finally, the role and importance of individual decision making should not be ignored. We all need to understand that the massive extent of federal intervention in the economy -- high levels of taxation, expenditures, and regulation -- makes it difficult for the private sector to perform its basic functions. The major contribution Congress could make is to reduce the burdens imposed by big government.